

## TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

### NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend a regulation under the CORPORATE SECURITIES LAW OF 1968 relating to entity conversion transactions. The Commissioner proposes to amend Section 260.121 of the California Code of Regulations. (10 C.C.R. § 260.121).

### PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Corporations, addressed to Kathy Womack, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m. on November 1, 2004. Written comments may also be sent to Kathy Womack (1) via e-mail at [regulations@corp.ca.gov](mailto:regulations@corp.ca.gov) or (2) via fax (916) 322-3205.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 260.121: Under the Corporate Securities Law of 1968 ("CSL"), it is unlawful for any person to offer or sell a security in the State of California in an issuer transaction unless such sale has been qualified or is exempt or not subject to qualification. It is also unlawful for any person to offer or sell any security in an "entity conversion transaction" unless the security is qualified or exempt. (Cal. Corp. Code § 25120). In order to qualify a security offering, an application for qualification must comply with Corporations Code Section 25121 and regulations promulgated thereunder.

Section 260.121 of the Commissioner's rules sets forth an application form for the qualification of securities transactions under Corporations Code Section 25120, but the application form does not include entity conversion transactions. The Commissioner proposes to amend the qualification application form in Section 260.121 to include entity conversion transactions.

The Commissioner also proposes clarifying changes to Section 260.121 to update the form for entities that are not organized as a corporation seeking to qualify securities.

## AUTHORITY

Corporations Code Sections 25610 and 25612.

## REFERENCE

- Corporations Code Sections 25005.1, 25120, and 25121.

## AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 36/01-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request document PRO 36/01-C. These documents are also available at [www.corp.ca.gov](http://www.corp.ca.gov). As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed at the web-site listed above.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the

action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Other non-discretionary cost or savings are imposed on local agencies: None.

### DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Does not impose a mandate on any local agency or school district or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within California; or (3) the expansion of businesses currently doing business within the State of California.

### COST IMPACTS OF REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any new costs that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulatory action merely implements clarifying changes to a form.

### EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations will not affect small business. This regulatory action simply makes clarifying changes to an already existing form.

### CONTACT PERSON

Nonsubstantive inquires concerning this action, such as requests for copies of the text of the proposed regulations or questions regarding the

timelines or rulemaking status, may be directed to Kathy Womack at (916) 322-3553. The backup contact is Karen Fong at (916) 322-3553. Inquires regarding the substance of the proposed regulation may be directed to Gayle Oshima, Corporations Counsel, Department of Corporations, 71 Stevenson Street, Suite 2100, San Francisco, 94105, (415) 972-8576.

Dated: September 3, 2004  
Sacramento, California

WILLIM P. WOOD  
California Corporations Commissioner

By \_\_\_\_\_  
TIMOTHY L. Le BAS  
Deputy Commissioner and General Counsel  
Office of Law and Legislation